



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2007

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THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No. 74 of 1994
&
C.M.P.Nos.3688 to 3690 of 2000

K.Chinnasamy . . Appellant

Versus

Sivagamiammal (Deceased) . . Respondent
2. P. Kuppusamy
3. K. Rajendiran
4. Swanthanthira rajeswaran

(Respondents 2 to 4 brought an record
as legal representatives of the deceased
sole respondent vide order of the court
dated 27.03.2007 made in CMP 3688 TO 3690/00.

Prayer: This second appeal is filed against the judgment and
decree of A.S.No.42 of 1992 dated 19.1.93 on the file of the Sub
Court, Tiruppur reversing the judgment and decree of O.S.No.55/91
dated 22.07.92 On the file of D.M.C., Tiruppur.

For Appellants :Mr.M.A.Muthukrishnan
For Respondent :Mr.Sethurathinam Senior Counsel for Mr.
T. Murugamanickam

JUDGMENT

The defendant in the lower Court is the appellant. Plaintiff
filed a suit for recovery of the amount due on the basis of a
promissory note stated to have been executed by the defendant on
04.02.88 (EX.A1). The defendant in the written statement has
denied the signature in the promissory note and also made certain
other defence including that there has been a previous enmity
between the husband of the plaintiff and the defendant and taking
advantage of the same, the suit came to be filed. The trial Court
dismissed the suit on the basis that the plaintiff has failed to
prove the genuineness of the signature under Ex.A1 by referring to
the handwriting expert especially when the defendant has denied



the signature in the promissory note Ex.A1 in the written statement filed in the suit and also in the reply notice marked as Ex.A4. The trial Court has also made a reference that on comparison of the signature in the written statement and in respect of Ex.A1 there is slight difference and the trial Court has ultimately dismissed the suit. As against that the plaintiff has filed an appeal. The appellate Court after considering the evidence adduced on behalf of the plaintiff has come to the conclusion that the plaintiff has in fact proved the execution of Ex.A1 and accordingly, the first appellate Court allowed the appeal and the suit was decreed. It is as against the said judgment of the first appellate Court, the defendant has filed the present second appeal.

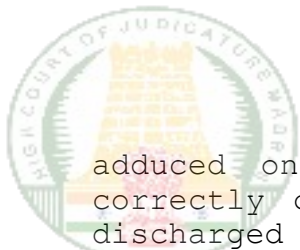
2.At the time of admitting the second appeal, the following substantial question of law is framed;

Whether the lower appellate Court is justified in ignoring the contradictory deposition of PW2 and PW3 regarding the place of execution of Ex.A1?

3.The learned counsel appearing for the appellant would submit that once under Ex.A4 reply notice, the defendant has denied the signature in the promissory note and also denied having borrowed any amount at the earliest point of time, it was the duty of the plaintiff to prove the signature under EX.A1 promissory note by sending it to an handwriting expert. On the other hand, the learned counsel would submit that there is patent contradiction in the deposition of PW2 and PW3 who are the scribe as well as the witnesses of Ex.A1. Further, the learned counsel would submit that in respect of the place of execution of Ex.A1, there has been contradictions in the evidence between PW2 and PW3 which is vital affecting the validity of the Ex.A1 as such.

4.On the other hand, the learned senior counsel appearing for the respondent would submit that the appellate court as on fact found that the plaintiff has in fact proved the execution of the suit promissory note Ex.A1 by witnesses and in view of the same, it is factual finding and there is no question of interference and no question of law involves in this case.

5.It is seen that curiously in this case, the defendant who was examined as DW1 has even denied his signature in the written statement as well as in the suit summons and apart from that he denied his signatures under Ex.A1 also. The entire evidence shows that in fact the plaintiff has not only examined herself but also examined the scribe as PW2 and the witness of Ex.A1 as PW3. That apart, there is one another independent witness examined as PW5, who was admittedly sent by the plaintiff to the defendant to get back the amount. That apart, the husband of the plaintiff has been examined as PW4. It is on the narration of the entire evidence



adduced on behalf of the plaintiff, the appellate Court has correctly come to the conclusion that the plaintiff has in fact discharged her obligation of proving the genuineness of Ex.A1. The mere fact that PW2 and PW3 have given different statements in respect of the place of execution will not invalidate the document Ex.A1, when by way of other witnesses the execution has been proved. Adding to that, as I have already enumerated the trial Court itself has found that the defendant had not only denied his signature in Ex.A1 but also has chosen to deny his own signature in the written statement as well as in the suit summons and that only shows the conduct of the defendant. On the other hand, a perusal of the suit promissory note under Ex.A1 and also in the written statement shows that there is no difference at all. There is one another aspect, which has been discussed by the learned first appellate Judge, namely that the defendant has not only signed his name in Ex.A1 on the stamp papers but also he has put his signature below the stamp which only proves the case of the plaintiff. In any event as it is correctly found by the first appellate court that the plaintiff has taken enormous efforts to prove the execution of Ex.A1 and the onus is on the part of the defendant to disprove it.

6. The learned counsel appearing for the appellant has relied upon the judgment of a Division Bench of this Court reported in 2001 (2) CTC 12 (D.PANDI vs. THE DHANALAKSHMI BANK LIMITED) wherein the bank has filed the suit for recovery of amount on the basis of loan transaction and it was in those circumstances the trial Court has taken upon itself the responsibility of comparing the disputed signature with that of the admitted signature. On the other hand in the present case, the trial Court having compared the signature has only said that there appears to be slight difference in the signature found place in Ex.A1 as well as in the written statement. This is not the case of loan transaction and the present case is covered by Negotiable Instrument Act (herein after referred as the Act). The provision of the Act especially under Section 118 imposes the presumption about the validity of the Negotiable Instrument until the contrary is proved by the other side. Inasmuch as the suit promissory note is covered by the said Act, the plaintiff has taken steps to prove the genuineness of Ex.A1 by examining various witnesses, the question which has to be considered in this case is that whether the defendant has proved the contrary i.e. the said exhibit A1 does not contain his signature. It is unfortunate that the learned Trial Judge has found that the plaintiff should have sent the Ex.A1 for handwriting expert on the basis of Ex.A4 reply notice where the defendant has denied the signature. On the other hand, a reading of Section 118 of the Act shows that the onus of disproving the claim of the plaintiff is shifted on the defendant and the presumption is always in favour of the instrument. In the present case, as correctly held by the first appellate Court that nothing



prevented the defendant to disprove the claim of the plaintiff by taking steps to send Ex.A1 to the handwriting expert.

7. In view of the above said facts and circumstances of the case, I do not find any reason to interfere with the findings of the first appellate court and there is absolutely no question of law much less any substantial question of law involved in this second appeal. In view of the same, the second appeal fails and the same is dismissed with costs. Consequently, connected C.M.Ps. are closed.

Jikr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO
The Subordinate Judge
Tiruppur (With records)

2. The District Munsif, Tiruppur

3. The Record Keeper, VR Section
High Court, Madras

+ one cc to Mr. A. Muthukrishnan, Advocate sr no. 13703
+ one cc to Mr. M. Duraiswamy, Advocate sr no. 13575

KG(CO)
NM(18.06.07)

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